IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT, AT ANCHORAGE

In The Matter of the Necessity for the Hospitalization of William Bigley,	)
Respondent	)

Case No. 3AN 08-1252PR

MEMORANDUM IN SUPPORT OF MOTION TO HOLD HEARINGS AT COURT HOUSE

Respondent has moved that all public hearings in this matter be held in a regular court room generally accessible to the public, such as the Nesbett or Boney court houses and notice of such hearings be published in the regular court calendar (Motion).

AS 47.30.735(b)(3) provides:

> (b) [T]he respondent has the right: . . .
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> > (3) to have the hearing open or closed to the public as the respondent elects;

These proceedings were made public pursuant to AS 47.30.735(b)(3) at the October 20, 2008, hearing on the involuntary commitment petition, and the October 28, 2008, status conference was also public as a result. The hearing on the AS 47.30.838/839 forced drugging petition (Forced Drugging Petition) is also expected to be a public hearing.

In order for the hearing to, in fact, be public, it may not be held behind the locked doors of the Alaska Psychiatric Institute (API). In addition, notice of the public hearing should be included in the court's public calendar as is done for other public hearings.

I. RESPONDENT HAS A CONSTITUTIONAL RIGHT TO A PUBLIC HEARING

There is both a common law and free speech right to have judicial proceedings open to the public, subject to very limited restrictions. *Publicker Industries, Inc. v. Cohen*, 733

F.2d 1059, 1066-1071 (3rd Cir. 1984). As the United States Supreme Court has held, when the right to a public hearing attaches, the First Amendment "prohibit[s] the government from summarily closing courtroom doors:"

> The Bill of Rights was enacted against the backdrop of the long history of trials being presumptively open. Public access to trials was then regarded as an important aspect of the process itself; the conduct of trials "before as many of the people as chuse to attend" was regarded as one of "the inestimable advantages of a free English constitution of government." 1 Journals 106, 107. In guaranteeing freedoms such as those of speech and press, the First Amendment can be read as protecting the right of everyone to attend trials so as to give meaning to those explicit guarantees. "[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 783, 98 S.Ct. 1407, 1419, 55 L.Ed.2d 707 (1978). Free speech carries with it some freedom to listen. "In a variety of contexts this Court has referred to a First Amendment right to 'receive information and ideas.' " *Kleindienst v. Mandel*, 408 U.S. 753, 762, 92 S.Ct. 2576, 2581, 33 L.Ed.2d 683 (1972). What this means in the context of trials is that the First Amendment guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long been open to the public at the time that Amendment was adopted. "For the First Amendment does not speak equivocally. . . . It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow." *Bridges v. California*, 314 U.S. 252, 263, 62 S.Ct. 190, 194, 86 L.Ed. 192 (1941) (footnote omitted).
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> It is not crucial whether we describe this right to attend criminal trials to hear, see, and communicate observations concerning them as a "right of access," cf. *Gannett*, *supra*, 443 U.S., at 397, 99 S.Ct., at 2914 (POWELL, J., concurring); *Saxbe v. Washington Post Co.*, 417 U.S. 843, 94 S.Ct. 2811, 41 L.Ed.2d 514 (1974); *Pell v. Procunier*, 417 U.S. 817, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974),[FN11] or a "right to gather information," for we have recognized that "without some protection for seeking out the news, freedom of the press could be eviscerated." *Branzburg v. Hayes*, 408 U.S. 665, 681, 92 S.Ct. 2646, 2656, 33 L.Ed.2d 626 (1972). The explicit, guaranteed rights to speak and to publish concerning what takes place at a

> trial would lose much meaning if access to observe the trial could, as it was here, be foreclosed arbitrarily.[1]

And as the 2nd Circuit said, quoting the 3rd Circuit:

> The public's exercise of its common law access right in civil cases promotes public confidence in the judicial system.... As with other branches of government, the bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud. Furthermore, the very openness of the process should provide the public with a more complete understanding of the judicial system and a better perception of its fairness.[2]

By granting respondents the right to elect to have hearings open to the public AS 47.30.735(b)(3) vindicates their right to have these hearings open to the public.[3]

Respondent understands the hearing on November 5, 2008, is to hear that portion of the Forced Drugging Petition seeking authority to indefinitely drug Respondent against his will on an emergency basis. API will presumably attempt to show the factual predicates for drugging Respondent against his will on an emergency basis exist and Respondent expects to be able to show that far from it, API has not come close to meeting the requirements for such forced drugging and has a history of flouting the statutory

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[1] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 576 100 S.Ct. 2814, 2826-7 (1980), footnote omitted.

[2] *U.S. v. Amodeo*, 71 F.3d 1044, 1048 (2nd Cir. 1995). For the Ninth Circuit, see *Kamakana v. Honolulu*, 447 F.3d 1172 (CA9 2006) for a discussion of these interests in the context of access to court records.

[3] Psychiatric respondents also often have a great interest in keeping these proceedings confidential depending on their circumstances and desires, especially where, unlike Respondent here, they have reputations to protect. In such event, the Alaska Legislature has determined in AS 47.30.735(b)(3) that such respondents' interest in closing the hearing prevails over the public's right to attend. This, is of course, not the issue here, but it hopefully gives the Court some background as to why the hearings are not to be either automatically open or closed; that respondents must elect one way or the other.

requirements. It is a matter of great concern to Respondent that he be able to draw the public's attention to what API seeks to do to him. Holding such a hearing at API would effectively deny him his right to do so.

II. A HEARING HELD AT API CAN IN NO WAY BE CONSIDERED A PUBLIC HEARING

API is a locked facility and the room where these hearings take place at API is behind these locked doors. In order to get into the room where these hearings take place, one has to "sign in" and otherwise run a gauntlet. Once admitted through the locked doors, one is locked in until someone with a key lets one out. Especially for those who have been locked up in API or another psychiatric facility, it can be extremely frightening to go through those locked doors knowing one will be locked in.[4] Even for members of the public who might not be concerned about being locked in API during a hearing, having the hearing at API is inherently not public. Having the hearing behind locked doors is inherently non-public. Moreover, someone who might be visiting the court house to see what goes on such as say, civics classes, or individual civics students, will not be able to attend a hearing that is being held at API. Especially important is that court monitors who regularly attend court hearings will not monitor a hearing held at API.

Simply put, a hearing held at API can in no way be considered a public hearing.[5]

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[4] Many patients find that while they may be able to sign in voluntarily as a patient, they are not allowed to leave.

[5] In addition, the room at API where the hearings are held is a cramped conference room with virtually no room for visitors.

III. THE HEARING MUST BE PUBLISHED ON THE COURT CALENDAR

As set forth in §I, above, the right of the public to observe the operations of the court system and Respondent's right to have the public be able to observe the operations of the court system is important in diminishing the possibilities for injustice, incompetence, perjury, and fraud and provide the public with a more complete understanding of the judicial system and a better perception of its fairness. This important function can not happen if the fact of the hearing is kept secret by failing to publish it. Thus, notice of the hearing must be published as it is for all other public hearings.

IV. API HAS BEEN TRANSPORTING RESPONDENT TO THE COURT HOUSE

At the October 28, 2008, status conference, the Court expressed concern about the inconvenience to API involved in transporting Respondent to the court house. First, API has done so on numerous times in 2007 and 2008. Second, and most importantly, any inconvenience to API is far outweighed by Respondent's interest. The Alaska Supreme Court has equated the intrusiveness of what API is seeking to do to Respondent with electroshock and lobotomy[6] and Respondent's right to have the hearings truly open to the public far outweighs the minor inconvenience to API of transporting him.

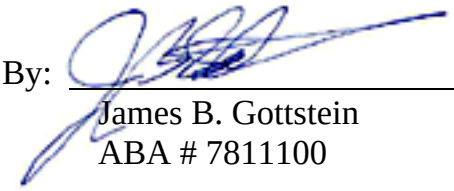
[6] *Myers v. Alaska Psychiatric Institute*, 138 P.3d 238, 242 (Alaska 2006), *Wetherhorn v. Alaska Psychiatric Institute*, 156 P.3d 371, 375 Alaska 2007).

V. CONCLUSION

For the foregoing reasons, Respondent urges the Court to schedule all public hearings in this matter in a regular court room in a regular court house and publish notice of the hearing in its court calendar as it would for other public hearings.

DATED: October 29, 2008.

Law Project for Psychiatric Rights

By: 

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